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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,952	02/04/2004	Yoshiro Udagawa	1232-5277	5312
27123 7590 09/05/2008 MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101				
EXAMINER				
QUIETT, CARRAMAH J				
ART UNIT		PAPER NUMBER		
2622				
NOTIFICATION DATE		DELIVERY MODE		
09/05/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/772,952

Applicant(s)

UDAGAWA, YOSHIRO

Examiner

Carramah J. Quiett

Art Unit

2622

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 5-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3 and 5-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment(s), filed on 06/09/2008, have been entered and made of record. Claims 1, 3, and 5-8 are pending.

Response to Arguments

2. Applicant's arguments with respect to claims 1, 3, and 5-8 have been considered but are moot in view of the new ground(s) of rejection.

On page 8 of 10 of the Remarks filed on 06/09/2008, the Applicant has requested, "a more complete statement for each specific instance of an 'adapted to' clause as to why it is believed that it should not be given patentable weight."

As stated in the previous Office Action, the Applicant's "*adapted to*" language as used in the claims broadens the scope of the claims. The MPEP states that, "Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by language that does not limit a claim to a particular structure." (MPEP 2111.04 [R-3]). In other words at the U.S. Patent and Trademark Office, if a limitation is written with "capable of" language, a reference is deemed to meet that limitation if the reference discusses the same element that, although not actually performing the claimed function, is **structurally capable of** performing it. Accordingly, the Examiner *will not* give a limitation with "capable of" language and a limitation with "adapted to" language patentable weight.

Claim 1 recites the following limitations: "a driving unit adapted to...", "a pixel defect information storage unit adapted to..." and "a correction unit adapted to..." Based on the MPEP

2111.04 [R-3], the Examiner will not give patentable weight to the limitations listed above for claim 1 because if a limitation is written with “capable of” (adapted to) language, a reference is deemed to meet that limitation if the reference discusses the same element (driving unit, pixel defect information storage, and correction unit) that, although not actually performing the claimed function, is **structurally capable of** performing it.

Similarly, claims 6, 7 and 8 each recite “a driving unit adapted to...” Based on the MPEP 2111.04 [R-3], the Examiner will not give patentable weight to the limitation listed above for each of claims 6, 7, and 8 because if a limitation is written with “capable of” (adapted to) language, a reference is deemed to meet that limitation if the reference discusses the same element (driving unit) that, although not actually performing the claimed function, is **structurally capable of** performing it.

While the Examiner has not given patentable weight to the limitations with “adapted to” language, claims 1, 3, and 5-6 have been given the best prior art examination as possible in order to expedite the prosecution of the present application. The Examiner respectfully suggests amending claims 1, 3 and 5-6 without the “adapted to” (capable of) language.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1 and 6-8** are rejected under 35 U.S.C. 102(b) as being anticipated by Kubota et al. (JP 2000-199321 – from IDS 01/29/2008).

For **claim 1**, Kubota discloses an image sensing apparatus (fig. 1) having an image sensing device (32; pg. 14, [0026]), comprising:

driving unit (35-36) adapted to* drive the image sensing device by a plurality of driving schemes (pgs. 15-16, [0027]-[0029]; pg. 23, [0045]);

pixel defect information storage unit (40a/b-42) adapted to* store pixel defect information as information about a pixel defect in the image sensing device in correspondence with each driving scheme (pg. 16, [0028]-[0029]); and

correction unit (43-45) adapted to* correct the pixel defect by referring to the pixel defect information in said pixel defect information storage unit in accordance with the driving scheme with which said driving unit drives the image sensing device (pg. 16, [0029]),

wherein said correction unit, based on first pixel defect information of a first driving scheme from the plurality of driving schemes (pgs. 23-24, [0045]-[0046]), generates second pixel defect information for a second driving scheme (pg. 24, [0047]), and stores the second pixel defect information in said pixel defect information storage unit (pgs. 24-26, [0047]-[0049]), and

wherein each pixel defect within the first pixel defect information corresponds to a pixel defect within the second pixel defect information (pgs. 24-26, [0047]-[0049]), and

wherein said second driving scheme from the plurality of driving schemes drives to read a second number of pixels of signal from the image sensing device, where the second number is

smaller than a first number of pixel of signal read from the image sensing device by the first driving scheme (pgs. 24-26, [0047]-[0049]).

For **claim 6**, Kubota teaches an image sensing method using an image sensing apparatus having an image sensing device (pg. 14, [0026]) and driving unit adapted to* drive the image sensing device by a plurality of driving schemes (pgs. 15-16, [0027]-[0029]; pg. 23, [0045]), comprising:

generating pixel defect information in accordance with the driving scheme with which the driving unit drives the image sensing device, such that each pixel defect within the pixel defect information of a driving scheme corresponds to a pixel defect within each pixel defect information of the remainder of the plurality of driving schemes (pgs. 23-26, [0045]-[0049]),

correcting a pixel defect by referring to pixel defect information in pixel defect information storage unit in accordance with the driving scheme with which the driving unit drives the image sensing device (pgs. 15-16, [0027]-[0029]; pgs. 24-26, [0047]-[0049]), the pixel defect information storage unit storing the pixel defect information as information about the pixel defect in the image sensing device in correspondence with each driving scheme (pgs. 15-16, [0027]-[0029]).

For **claim 7**, Kubota discloses a computer-readable recording medium which records a computer program for an image sensing apparatus (fig. 1) having an image sensing device (32; pg. 14, [0026]) and driving unit (35-36) adapted to* drive the image sensing device by a plurality of driving schemes (pgs. 15-16, [0027]-[0029]; pg. 23, [0045]), characterized by

generating pixel defect information in accordance with the driving scheme with which the driving unit drives the image sensing device, such that each pixel defect within the pixel defect

information of a driving scheme corresponds to a pixel defect within each pixel defect information of the remainder of the plurality of driving schemes (pgs. 23-26, [0045]-[0049]),

causing a computer (40a/b-45) in the image sensing apparatus to execute processing for correcting a pixel defect by referring to pixel defect information in pixel defect information storage unit in accordance with the driving scheme with which the driving unit drives the image sensing device (pgs. 15-16, [0027]-[0029]; pg. 23, [0045]), the pixel defect information storage unit (40a/b-42) storing the pixel defect information as information about the pixel defect in the image sensing device in correspondence with each driving scheme (pgs. 15-16, [0027]-[0029]).

Claim 8 is a “computer-readable recording medium encoded with a computer program for an image sensing apparatus” claim corresponding to claim 7, which is a “computer-readable recording medium which records a program for an image sensing apparatus” claim. Therefore, claim 8 is analyzed and rejected as previously discussed with respect to claim 7.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. **Claim 3** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al. (JP 2000-199321 – from IDS 01/29/2008).

For **claim 3**, Kubota discloses the apparatus according to claim 1. However, in Kubota the detailed configuration on pages 23-26 does not expressly disclose wherein the first driving scheme is a driving scheme from the plurality of driving schemes that reads all pixels of the image sensing device.

In another detailed configuration on pages 21-23, Kubota discloses wherein the first driving scheme is a driving scheme from the plurality of driving schemes that reads all pixels of the image sensing device ([0040]-[0044]). Please note that both configurations are in the same embodiment where the reading modes are activated by a non-illustrated switch ([0040] and [0045]). In light of the teaching of Kidono, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the first driving scheme of Kubota with a driving scheme that reads all pixel of the image sensing device in order to obtain an improved high general-purpose defect pixel detecting apparatus (Kubota, pg. 10, [0009]).

7. **Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al. (JP 2000-199321 – from IDS 01/29/2008) in view of Kidono et al. (U.S. Pat. #6,970,193).

For **claim 5**, Kubota discloses the apparatus according to claim 1. However, Kubota does not expressly teach wherein said pixel defect information storage unit is a nonvolatile recording medium.

In a similar field of endeavor, Kidono teaches an imaging apparatus wherein said pixel defect information storage unit is a nonvolatile recording medium (EEPROM; col. 5, lines 25-37). In light of the teaching of Kidono, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the storage unit of Kubota with the storage unit as recited in claim 5 so that the address of the stored defective (fault) pixels are easily looked up (Kidono col. 6, lines 13-15) thereby helping to reduce the occurrence of additional fixed pattern noise in an image (Kidono col. 2, lines 26-27).

***Note:** The Applicant's "*adapted to*" language as used in the claims broadens the scope of the claims. The MPEP states that, "Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by language that does not limit a claim to a particular structure." (MPEP 2111.04 [R-3]) In other words at the U.S. Patent and Trademark Office, if a limitation is written with "capable of" language, a reference is deemed to meet that limitation if the reference discusses the same element that, although not actually performing the claimed function, is **structurally capable of** performing it. Accordingly, the Examiner *will not* give a limitation with "capable of" language and a limitation with "adapted to" language patentable weight.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carramah J. Quiett whose telephone number is (571)272-7316. The examiner can normally be reached on 8:00-5:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NgocYen Vu can be reached on (571) 272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. J. Q./
Examiner, Art Unit 2622
August 29, 2008

*/Ngoc-Yen T. VU/
Supervisory Patent Examiner, Art Unit 2622*